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Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 09M-53

080711 17

AUG 31 2009

FCC Main Room

In the Matter of)	
)	
PENDLETON C. WAUGH, CHARLES M. AUSTIN, and JAY R. BISHOP)	EB Docket No. 07-147
)	
PREFERRED COMMUNICATION SYSTEMS, INC.)	File No. EB-06-IH-2112
)	NAL/Acct. No. 200732080025
)	
Licensee of Various Site-by-Site Licenses in the Specialized Mobile Radio Service)	FRN No. 0003769049
)	
PREFERRED ACQUISITIONS, INC.)	FRN No. 0003786183
)	
Licensee of Various Economic Area Licenses in the 800 MHz Specialized Mobile Radio Service)	
)	

ORDER

Issued: August 20, 2009

Released: August 20, 2009

A Motion for Partial Summary Decision was filed by Mr. Pendleton C. Waugh ("Waugh") on August 6, 2009. An Opposition was filed on August 7, 2009, by the Enforcement Bureau ("Bureau"). On August 12, 2009, Mr. Waugh filed a Request for Permission to File Reply to Opposition to Motion for Partial Summary Decision ("Reply"). There has been no responsive pleading filed with respect to a Reply. So on or about August 17, 2009, the Presiding Judge by e-mail informally granted Mr. Waugh's counsel leave to file a Reply.

Mr. Waugh represents - without contradiction - that he was not served and had not seen the Joint Request for Approval of Settlement Agreement and Termination of Proceeding ("Joint Motion"), or the proposed Settlement Agreement ("Agreement") that were filed and submitted to the Presiding Judge on August 5, 2009. The parties named in the case caption, except Mr. Waugh, were parties to the Joint Motion and signatories to the Agreement. The Bureau joined in the Joint Motion and asked for approval of the Agreement and termination of the proceeding.

Mr. Waugh asserts that it was not until the p.m. of August 5, that his counsel was contacted *via* telephone by Bureau counsel, only to be told of the filing of the Agreement and Joint Motion. It appears that neither Mr. Waugh nor his counsel were provided copies of the Joint Motion or Agreement at the time of the phone call.

On August 5, 2009, the Presiding Judge granted the Joint Motion, accepting the Agreement and terminating the proceeding. *See Order* FCC 09M-51, issued August 5 and released August 6, 2009 (“Order”). The *Order* noted multiple stays being granted on March 11, May 6, and June 12, 2009, in order to facilitate settlement negotiations. So when the Joint Motion and Agreement were filed on August 5th it came as no surprise to the Presiding Judge, and the implication was that all parties were on board and that forthwith termination was appropriate.¹ *See Order* at n. 4 (Mr. Waugh thought to be only a consultant who would not be hired again and therefore not a necessary signatory). There was no information provided as to whether Mr. Waugh had been invited to participate in settlement, and no indication of his knowledge of settlement or termination without resolving disqualifying issues against Mr. Waugh. Nothing was filed thereafter by the Bureau or any of the settling parties to clarify a misunderstanding in issuance of the *Order* that a truly universal settlement had been reached among all parties named in the case caption.

In apparent frustration, Mr. Waugh represents that now he is preparing an appeal to the Commission.¹ He had filed his Motion for Partial Summary Decision on August 6, 2009, the same date as the *Order*’s release, seeking summary disposition of the substantive issues set against Mr. Waugh that were not resolved. Potential harm caused by premature termination whereby rights are denied, is alleged by Mr. Waugh as follows:

Since Waugh neither agreed to such penalties nor was afforded the opportunity for a hearing with respect to such penalties or his qualifications to be and remain a Commission licensee, the Judge’s Approval Order terminating the proceeding necessarily violated Waugh’s constitutional right to procedural due process.

See Reply at 3 n. 1. For the Presiding Judge to have inadvertently caused harm by premature termination presents good cause for further reflection and inquiry.

Rulings

I.

Accordingly, for good cause shown, the Request for Permission to File Reply to Opposition to Motion for Partial Summary Decision IS GRANTED.²

II.

IT IS FURTHER ORDERED that the signatories to the Agreement SHALL FILE by **August 28, 2009**, a *Settlement Fact Statement* in which circumstances and occurrences leading up to the execution of the Agreement are set forth fully, starting with the date of the last stay

¹ One Appeal has already been filed by dissatisfied shareholders of Preferred Communication Systems, Inc. That appeal is unrelated to Mr. Waugh’s prospective appeal. These appeals are being taken within the allowable time (30 days from the termination order of August 6, 2009.) *See* 47 CFR §1.301 (a) (1).

² Also, *see* 47 CFR §1.294(d) (additional pleadings may be filed when requested by Presiding Judge). Such request is made herein.

granted on June 12, 2009, up to and including the Agreement's execution, filing and submission to the Presiding Judge on August 5, with particular attention to participation or non-participation of Pendleton C. Waugh in the process, description of copies of drafts and/or memoranda and/or correspondence/e-mail given to or withheld from Mr. Waugh, and stating reasons why Mr. Waugh was not included as a participant in negotiations and/or signatory to the Agreement, and why Mr. Waugh's counsel was not timely provided copies of the Joint Motion and Agreement simultaneously with the Presiding Judge on August 5, and why Mr. Waugh was not afforded time to react or respond.

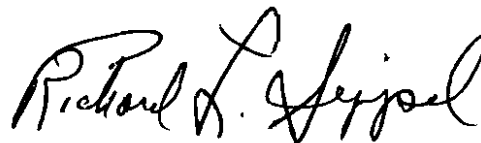
III.

IT IS FURTHER ORDERED that the Enforcement Bureau SHALL FILE on **August 31, 2009**, a *Statement on Public Interest and Fairness* in which the Enforcement Bureau provides an explanation on how the public interest is being served by failing to resolve issues set in the *Order to Show Cause* with respect to Pendleton C. Waugh, and whether or not the Enforcement Bureau agrees that Mr. Waugh has a right to a determination on-the-merits of the issues charged against him before this case is terminated, giving reasons, and whether or not Mr. Waugh was entitled to fair, timely and adequate notice by the settling parties and/or the Enforcement Bureau that termination by settlement was being sought without Mr. Waugh's participation, giving reasons.

IV.

IT IS FURTHER ORDERED that *Order FCC 09M-51*, released August 6, 2009, IS IN ABEYANCE pending further order.³

FEDERAL COMMUNICATIONS COMMISSION⁴

A handwritten signature in black ink, reading "Richard L. Sippel". The signature is fluid and cursive, with the first name "Richard" and last name "Sippel" clearly legible.

Richard L. Sippel
Chief Administrative Law Judge

³ See 47 CFR §1.207(c) incorporating §§1.101 through 1.120 (reconsideration and review of actions taken). See also 47 CFR §1.243(f) and (g) (regulate course of hearing and require filings on questions such as fairness and due process). As a suggestion, the non-parties filing appeal through Mr. Michael D. Judy on August 13, 2009, might consider appropriate action to withdraw the appeal with right of refiling, which would thereby allow their limited intervention question to be further considered.

⁴ Courtesy copies of this *Order* are sent to counsel by e-mail upon issuance.